



**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)	
)	
WILLIAM WILKINS,)	
)	
Complainant,)	
)	Charge No.: 2000CF2175
and)	EEOC No.: 21BA01644
)	ALS No.: 11557
MOBIL OIL a/k/a STATION)	
OPERATORS, INC.,)	
)	
Respondent.)	

RECOMMENDED ORDER AND DECISION

On April 21, 2000, Complainant, William Wilkins, filed a charge of discrimination with the Illinois Department of Human Rights (IDHR). That charge alleged that Respondent, Mobil Oil a/k/a Station Operators, Inc., discriminated against Complainant on the basis of his race by subjecting him to unequal pay. The charge further alleged that Complainant was not paid a customer service award in a timely manner and that he was not allowed to file an internal racial harassment complaint against his manager.

Respondent failed to appear for the IDHR's scheduled fact finding conference. As a result, the IDHR issued a Notice of Default against Respondent and filed a Petition for Default Order and Complaint for Damages with the Illinois Human Rights Commission. The Commission granted the IDHR's petition, and the

requested hearing on damages was held on August 21, 2001.

Both parties attended the damages hearing. They both waived posthearing briefing and made closing arguments on the record. The matter is now ready for decision.

FINDINGS OF FACT

The following findings of fact were derived from the record file in this case and from the evidence presented at the damages hearing.

1. Complainant began work for Respondent in September of 1999.
2. Complainant's position was assistant manager.
3. Complainant became a "certified" assistant manager in February of 2000. Certification should have entitled Complainant to an additional \$2.00 per hour in pay.
4. Jose Motta, another assistant manager with Respondent, became certified in March of 2000.
5. Complainant is black, while Motta is not.
6. Complainant and Motta received their \$2.00 per hour pay raises on the same day, May 26, 2000.

CONCLUSIONS OF LAW

1. Ambiguities in damage calculations are resolved against the discriminating employer.
2. Complainant failed to prove any damages with regard to his claims of racial harassment and denial of the right to file an internal complaint.

DISCUSSION

On June 13, 2001, a panel of the Human Rights Commission entered an order of default against Respondent. As a result, there are no liability issues to address. Only damages issues remain to be determined.

Complainant's main claim is that he was denied equal pay. He began work for Respondent in September of 1999. His position was assistant manager.

In February of 2000, Complainant became a "certified" assistant manager. That certification should have entitled him to an additional \$2.00 per hour in pay. That raise, though, did not appear until months later.

Jose Motta, another assistant manager with Respondent, became certified in March of 2000. Complainant is black, while Motta is not. Complainant and Motta received their \$2.00 per hour pay raises on the same day, May 26, 2000.

Respondent argues that, since Complainant and his comparative received their raises on the same day, Complainant has failed to prove that he is entitled to any damages. That argument ignores the fact that Complainant had to wait a month longer than Motta to receive his certification raise. The cost of that delay is the proper measure of damages.¹

The record is vague as to the number of hours Complainant

¹ In another equal pay issue, Complainant alleged that he had not received a customer service award to which he was entitled, but he failed to give any indication of how large that award should have been. Accordingly, no compensation is recommended on that issue.

worked each week. The clear suggestion, though, is that Complainant was a full-time employee. Under Commission case law, ambiguities involving backpay amounts should be resolved against the discriminating employer. **Clark v. Human Rights Commission**, 141 Ill. App. 3d 178, 490 N.E.2d 29 (1st Dist. 1986). Assuming that Complainant worked a standard forty-hour work week, his \$2.00 raise would have been worth \$80.00 per week. Since he waited an extra four weeks for that raise, his damages are four times the \$80.00, or \$320.00. That is the recommended backpay award.

Complainant also raised claims involving racial harassment and denial of the opportunity to file an internal complaint regarding that harassment. He failed, though, to offer evidence to support an award of damages for those claims. There were no specifics on the method or extent of the harassment or the mental or physical effects of that harassment. Similarly, there was no indication of the effects of the refusal to allow Complainant to file an internal complaint.

A finding of liability, without more, is insufficient to justify an award. There is no presumption of damages based upon a civil rights violation. **Kauling-Schoen and Silhouette American Health Spas**, ___ Ill. HRC Rep. ___, (1986SF0177, February 8, 1993); **Smith and Cook County Sheriff's Office, Cook County Dep't of Corrections**, 19 Ill. HRC Rep. 131 (1985). As a result, there is no recommended award for the harassment and refusal claims.

Although the recommended backpay award is relatively small, Complainant has had a substantial wait for the money to which he is entitled. As a result, prejudgment interest is necessary to make him whole. Such interest is recommended.

In addition, Respondent should be ordered to clear Complainant's personnel records of references to this case. Finally, Respondent should be ordered to cease and desist from further discrimination on the basis of race.

RECOMMENDATION

Based upon the foregoing, it is recommended that an order be entered awarding Complainant the following relief:

A. That Respondent pay to Complainant the sum of \$320.00 for lost backpay;

B. That Respondent pay to Complainant prejudgment interest on the backpay award, such interest to be calculated as set forth in 56 Ill. Adm. Code, Section 5300.1145;

C. That Respondent clear from Complainant's personnel records all references to the filing of the underlying charge of discrimination and the subsequent disposition thereof;

D. That Respondent be ordered to cease and desist from further unlawful discrimination on the basis of race.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL J. EVANS
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: March 13, 2002